seem, however, that the American Sugar Refining Company stands as secure before the law as the United States Steel Corporation. For the business of the independent competitors of the so-called Sugar Trust has continued to thrive and the American Sugar Refining Company is doing today a substantially smaller percentage of the total business than it did at the time of its formation.

However, this decision leaves the meaning of the law not more indefinite and uncertain than many constitutional provisions, statutes and rules of law with which the courts have to deal. And it is doubtful whether anything would be gained if Congress should attempt to define by a hard and fast rule what a monopoly is. It is certain that if it had made such an attempt, it would have tried to prevent the organization of the United States Steel Corporation. And, yet, the United States Supreme Court has just declared that this corporation is a beneficent institution—a "good trust", within the distinction laid down by the idol of the American people—Theodore Roosevelt.

Upon the basis of the decisions herein considered, it is submitted that the Sherman Anti-Trust Act is to be interpreted as follows:

First: Combinations possessing a monopolistic (dominating) control effected through the organization of large corporations, as well as contracts involving unreasonable restraints of trade or tending to monopoly, come within the Act.

This is contrary to the *Knight* case, and, in the opinion of the writer, contrary to a sound interpretation of the Act, but the *Knight* case was in effect overruled by the decision in the *Northern Securities* case.

Second: A combination effected through the medium of a large corporation is illegal, provided only that it exercises its monopolistic control unfairly and oppressively.

This is the rule of reason laid down by Chief Justice White in the *Standard Oil* and the *American Tobacco Company* cases, and consistently applied in the *United States Steel Corporation* case.

Third: Whether or not the combination is using its monopolistic control unfairly and oppressively and therefore involves an unreasonable restraint of trade is to be determined by a consideration of (*a*) the acts of its promoters prior to the formation of the corporation; (*b*) the acts of the managers of the enterprise subsequent thereto; (*c*) how far outside competition has been able to thrive or maintain itself since the formation of the combination; (*d*) the nature of the business and its relation to the public interest.

If the outside competition thrives, that is very good evidence that the Trust is not misusing its power, and if, in addition, it can be shown that there has been no undue reduction of wages, undue enhancement of prices or unfair practices as against competitors, it may be confidently asserted that the combination does not come within the condemnation of the Act.

G. F. C.

THE DISPOSITION OF INSURANCE MONEY WHEN THE BENEFICIARY MURDERS THE INSURED.—It is usually said that the beneficiary of an insurance policy who intentionally causes the death of the insured cannot recover in an action on the policy, but that the insured's administrator can recover the proceeds for the benefit of the estate on the theory of

a resulting trust.[1] The latter proposition is usually true as far as it goes, but it does not afford a rule for the ultimate disposition of the money, and on that point the courts will be found to differ. In *Johnston* v. *Metropolitan Life Insurance Co.* (W. Va. 1919) 100 S. E. 865, the beneficiary was also, under the West Virginia law, the sole distributee of the insured, and the court held that while it could not override the statute of distribution, it could look through the whole transaction to ascertain the eventual disposition of the money, and therefore refused to create the resulting trust when the administrator brought suit. The court in its opinion distinctly affirmed the liability of the company, but the decision necessarily foreclosed any possible recovery.

It is plain that to prevent the beneficiary from taking under such circumstances the court must either refuse to create the trust or disregard the statute of distribution. An examination of the cases will show varying attitudes. In view of the West Virginia court's professed helplessness before the statute, it is interesting to dissect the theory on which the beneficiary was denied recovery in the leading English case,[2] cited in the main case with evident approval. The Married Women's Property Act[3] stated in unambiguous language that whenever a wife should be named beneficiary in a policy, the insured's executor should hold the proceeds in trust for her. Despite the fact that the trust was created by the statute as clearly as distributees are designated by statute, the court declared that the murder by the beneficiary rendered the trust incapable of performance and decreed that the executor should keep the money for the benefit of the assured's estate. And in this country some courts have not hesitated to circumvent the statute of distribution itself in these cases. In *Supreme Lodge* v. *Menkhausen*[4] the Illinois court held that the murder had the

[1]See 15 Columbia Law Rev. 260. In treating this subject it seems unnecessary to make any distinction between policies in ordinary insurance companies and mutual benefit societies. Although the rights of the beneficiaries are said to be different in the two cases, the difference seems to be slighter than some opinions indicate, and would in no way affect the present problem. See Ryan *v.* Rothweiler (1893) 50 Ohio St. 595, 35 N. E. 679; Modern Woodmen *v.* Headle (1914) 88 Vt. 37, 46, 90 Atl. 893. Where the beneficiary takes out the insurance and pays the premiums, a different question might arise. Presumably there the insured's administrator would have no claim. Anderson *v.* Parker (1910) 152 N. C. 1, 67 S. E. 53 (*semble*).

[2]Cleaver *v.* Mutual Reserve Fund Life Ass'n. [1892] 1 Q. B. 147. The court also cited Schmidt *v.* Northern Life Ass'n. (1900) 112 Iowa 41, 83 N. W. 800, and failed to comment on the fact that the Iowa court expressly refused to consider the question of whether the beneficiary would be allowed to take as distributee.

[3]45 & 46 Vict. c. 75, § 11.

[4](1904) 209 Ill. 277, 283, 70 N. E. 567. The facts of that case were as follows:—A wife was murdered by her husband, whom she had named as beneficiary in a mutual benefit certificate. The Illinois laws on mutual benefit societies declared that a member might name husband or wife, members of the family and certain other relatives as beneficiaries. The court allowed the children to recover the proceeds of the certificate. In Wall *v.* Pfanschmidt (1914) 265 Ill. 180, 192, 106 N. E. 785, the court attempted to explain that this decision did not override the statute of distribution, because it merely construed a contract. Obviously, however, it must be a strange construction of an insurance contract which could bring

same effect as a divorce as far as the right of the beneficiary to the insurance money was concerned, and specifically stated that thereafter the beneficiary could not take the proceeds as "heir or heir at law of the deceased". And in Minnesota,[5] in a case where the brother of the insured was the co-distributee of the beneficiary, the court allowed the former to recover the entire proceeds of the policy, treating the beneficiary as dead when the disposition of the proceeds was at issue. At the other pole is *Murchison* v. *Murchison*,[6] where the Texas court assumed the right of the administrator to recover to be indefeasible and then refused to override the statute of distribution, thus allowing the money to go to the beneficiary.

Here then are seen three different lines of policy in these cases,—to deny recovery to the administrator, to treat the beneficiary as dead in settling the question, or to uphold both the administrator's right and the right of the beneficiary as distributee. Since the matter is confessedly one of public policy, that most all-embracing of discretionary doctrines, it may well be asked which brings the most satisfactory results, actually as well as logically. Both logic and justice seem to demand that to prevent the assured from being defrauded, his estate, which represents him, should recover the money. And to treat the beneficiary as dead thereafter and allow the heirs next in line to take, is probably the solution which would appear most satisfactory to the average man. Obviously this is pure fiction, but there is nothing novel in the principle of treating a relative as non-existent in determining the inheritance of some of an intestate's property. At common law an alien child could not inherit real property, but it did not escheat thereby but went to the heirs next in line.[7] In the instant case the wife was apparently the only heir, and it might be asked to whom the money would then pass. But it seems plain that the state would take it. Strict escheat applies only to realty, but modern statutes usually provide that the administrator shall pay to the proper state official any property in his possession which no one claims as heir.[8] It is undeniable that this doctrine disregards the statute of distribution, but it is also undeniable that courts do at times disregard statutes, and there seems no reason why greater sanctity should be afforded this law than any other legislative act.[9]

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the result that a person could not take as heir at law. The *Menkhausen* case might conceivably be interpreted as holding that the mutual benefit laws directed that when the husband was incapable of taking the children should recover, but even such an interpretation would amount merely to a factual disregard of the statute of distribution by reading into another law a meaning which it plainly was never intended to have.

[5]Sharpless *v.* Ancient *etc.* Workmen (1916) 135 Minn. 35, 159 N. W. 1086.

[6](Tex. 1918) 203 S. W. 423.

[7]Jackson *v.* Jackson (N. Y. 1810) 7 Johns. *214; Orr *v.* Hodgson (1819) 17 U. S. 453, 461.

[8]Excellent treatment of the difference between common law and modern escheat, bearing directly on this point, can be found in Commonwealth *v.* Blanton's Executors (1842) 41 Ky. 393 and Johnston *v.* Spicer (1887) 107 N. Y. 185, 196 *et seq.*, 13 N. E. 753.

[9]See the dissenting opinion in Wellner *v.* Eckstein (1908) 105 Minn. 444, 456, 117 N. W. 830, wherein Justice Elliott scouts the theory that a court can not disregard the apparent meaning of any law under proper circumstances. It is interesting also to note that in Dickinson *v.* Stuart

On the other hand, the Texas doctrine of allowing the beneficiary to take as distributee is not so startling as it first seems. The objection to allowing the beneficiary to take undoubtedly springs from our revulsion to the thought of the murderer enjoying the fruits of his wrongdoing. But such enjoyment is more theoretical than actual. It is usually limited to the time between the murder and the murderer's execution,— a time spent in imprisonment. It is true that his heirs then take, but if he is a distributee of the insured his heirs are likely to be those who would have taken had he been treated as dead. And this doctrine is as unassailable logically as that which allows the administrator to recover for the benefit of the estate. For when the next heirs assert a right to the money against the beneficiary-distributee, their claim is founded, not on their loss, but merely on the other's wrong. If the claim is allowed, the murder really becomes a fortunate event for them. Neither law nor equity ordinarily sanctions such a result.

Either of these theories, however, seems preferable to the West Virginia decision, which allows the company to benefit by the murder. It is true, of course, that there are circumstances in which the courts will not hesitate to release the company from all liability,[10] but it is difficult to conceive of a reason for doing so when the event insured against has so plainly taken place. Probably the most satisfactory way of dealing with the whole problem is by statute, and this method has been adopted in some states.[11]

THE RIGHTS OF A PROMISEE UNDER A CONTRACT TO LEAVE PROPERTY BY WILL.—The rights acquired by a promisee under a contract to devise or bequeath property to him by will are merely contractual and con-

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Colliery Co. (1912) 71 W. Va. 325, 76 S. E. 654, the West Virginia court respected the statute of distribution at the expense of another law. A father secured employment for his child contrary to law. The child was killed and the court refused to allow his administrator to recover from the company because the father happened to be the sole distributee. Yet the West Virginia Code, §§ 4409, 4410, gives the administrator a statutory legal right to recover damages for wrongful death, and makes no exceptions whatsoever.

[10]Northwestern Life Ins. Co. *v.* McCue (1912) 223 U. S. 234, 32 Sup. Ct. 220; Burt *v.* Union *etc.* Ins. Co. (1902) 187 U. S. 362, 23 Sup. Ct. 139. In these cases the insured was convicted of murder and executed, and the court held that such a demise was not a risk insured against. From one viewpoint no great injustice results from such a decision. So far as life insurance is considered a contract of indemnity, like fire insurance, the company earns its premiums although loss never occurs. But life insurance is usually considered more as an investment than as indemnity. It is well known that under the level premium plan the insurer receives from the insured in the earlier years the natural premium plus a deposit, and this deposit forms the basis of the surrender value of the policy. See 18 Columbia Law Rev. 381-383. It would seem that even in the above cases, since the risk has never, by the court's decision, accrued, the insured's estate would be entitled to the surrender value of the policy, but the point seems never to have been raised.

[11]Iowa Code (1913 Supp.) § 3386; Ind. Ann. Stat. (Burns 1914) § 2995; Cal. Civ. Code (1912) § 1409.